



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT EXAMINING OPERATION

In re Application of:
John William Carroll

Serial No.: 09/621,307

Filed: July 20, 2000

Titled: **A THERAPEUTIC
COMPOSITION**

§ Atty. Docket No.: FREA,002
§
§
§ Examiner: J.A. Venkat
§
§ Group Art Unit: 1615
§

MAIL STOP AF
COMMISSIONER OF PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

CERTIFICATE OF MAILING (37 CFR 1.8a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date indicated below with sufficient postage as first class mail in an envelope addressed to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

January 14, 2004
Mark R. Wisnel, Registration No. 30,607
Date

**THIRD RESPONSE TO FINAL ACTION OF JULY 14, 2003
(37 C.F.R. 1.116(a)) AND PETITION FOR REFUND**

Dear Sir:

Applicant filed a **Response to Final Action of July 14, 2003** in the captioned application on October 13, 2003. However, in an Advisory Action mailed November 4, 2003, the **Response to Final Action of July 14, 2003** was refused entry because it allegedly raised new matter. Applicant therefore filed a **Second Response to Final Action of July 14, 2003** (with a request for a one month extension of the time to respond) with a certificate of facsimile transmission on November 14, 2003. The Examiner has since advised the undersigned Attorney for Applicant by telephone that the **Second Response to Final Action of July 14, 2003** would not be entered for failure to comply with the revised amendment practice effective July 30, 2003. Applicant is, therefore, filing this **Third Response**, which complies in all respects with the requirements of the revised amendment practice, for the same purpose as the Second Response, namely, to amend the application to include a new claim 43 that is allowable over the art and that does not raise new matter, and to cancel all rejected claims, it being Applicant's intention to place the application in condition for allowance.

To insure entry of this **Third Response to Final Action of July 14, 2003**, a request for an extension of the time to respond for three months is enclosed. Applicant already filed a request for a one month extension of the time to respond with the above-described **Second**

Response to Final Action of July 14, 2003, so rather than enclosing a check for a three month extension of time to respond, the check that is enclosed is a check in the amount of the \$420.00 difference between the \$55.00 fee for a one month extension of time and the \$475.00 fee for a three month extension of time to respond. In the event the certificate of mailing on either this **Third Response** or the enclosed request for extension of time was either inadvertently not executed or improperly executed, any necessary fees were not included and/or were insufficient in amount, or for any other reason this Response is not considered timely filed, request is hereby made for an extension of the time to respond for the period necessary to ensure consideration of this Response and the Commissioner is authorized to charge Deposit Account No. 50-0965 (FREA,002) in the amount of any necessary fee.

REQUEST FOR REFUND

Applicant also respectfully requests a refund of the enclosed \$420.00 check, and suggests that a further extension of the time to respond should not be necessary to insure entry of this **Third Response**, for the following reason. As set out in MPEP 714.03 (Rev. 1, Feb. 2003), upon receipt of an amendment that does not comply with revised 37 C.F.R. 1.121, an applicant is to be notified via a Notice of Non-Compliant Amendment. No such Notice was sent after Applicant filed the **Second Response to Final Action of July 14, 2003** on November 14, 2003. Instead, as set out above, the Examiner informed the undersigned Attorney that Applicant's **Second Response** did not meet the requirements of 37 C.F.R. 1.121 by telephone.

Had a Notice of Non-Compliant Amendment been sent in this application, that Notice would have set a period during which the non-compliant section(s) of the response would have had to be corrected. Had such a Notice been sent as required by MPEP 7414.03, Applicant would not have to file a request for an extension of time with this **Third Response**, nor would Applicant have to pay the fee for a three month extension of time. It is therefore respectfully requested that Applicant be credited with a refund in the amount of the enclosed \$420.00 check. The refund can be made to the Deposit Account of Applicant's Attorney, No. 50-0965 (FREA,002).